

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

FILED BY *cg* D.C.  
05 DEC 22 PM 1:23

DUSA PHARMACEUTICALS, INC., a :  
New Jersey corporation; and :  
QUEEN'S UNIVERSITY AT :  
KINGSTON, a Canadian academic :  
Organization : No. 05-2853 DV

THOMAS M. GOULD  
CLERK, U.S. DISTRICT COURT  
BY *cg* THIS

Plaintiffs,

v.

ADAM W. BAKER, M.D. :  
a Tennessee citizen; :  
and :  
DERMATOLOGY REALM AND :  
FAMILY PRACTICE, PLLC :  
a Tennessee limited liability company :

Defendants.

**CONSENT JUDGMENT**

Plaintiffs DUSA Pharmaceuticals, Inc.® ("DUSA") and Queen's University at Kingston ("Queen's University") (collectively "Plaintiffs") and Defendants Adam W. Baker, M.D. ("Baker") and Dermatology Realm and Family Practice, PLLC ("Dermatology Realm") (collectively "Defendants"), having agreed to a settlement of the matters at issue between them, hereby agree and consent to judgment as follows:

1. Plaintiffs' above-captioned complaint is a civil action for patent infringement of United States Patent Nos. 6,710,066 ("the '066 patent") and 5,955,490 ("the '490 patent") under 35 U.S.C. §271(a), false advertising under 15 U.S.C. §1125, trademark infringement under 15 U.S.C. §1114, unfair competition under TENN. CODE ANN. §47-18-104, unfair competition under TENN. CODE ANN. §47-25-403, and Tennessee common law trademark infringement.
2. Defendants admit each of the allegations contained in the above-captioned complaint, specifically those allegations contained in paragraphs 1 through 30.



3. Defendants admit that Dr. Baker, in concert with Dermatology Realm, practices medicine, advertises his practice, unfairly competes with DUSA, and as part of that practice, infringes the '066 patent and the '490 patent and DUSA's trademark, LEVULAN®.
4. Defendants accordingly consent and agree to be permanently enjoined from infringing United States Patent No. 6,710,066 during the life of that patent, and in furtherance thereof will not use aminolevulinic acid containing drug products from a source other than DUSA for treatment of actinic keratosis.
5. Defendants consent and agree to be permanently enjoined from infringing United States Patent No. 5,955,490 during the life of that patent, and in furtherance thereof will not use aminolevulinic acid containing drug products from a source other than DUSA for treatment of acne.
6. Defendants consent and agree to be permanently enjoined from promoting and advertising aminolevulinic acid containing drug products from a source other than DUSA in a confusingly similar manner to DUSA's LEVULAN®.
7. Defendants consent and agree to be preliminarily and permanently enjoined from falsely passing off aminolevulinic acid containing drug products from a source other than DUSA as DUSA's LEVULAN®.
8. Defendants consent and agree to be permanently enjoined from misrepresenting aminolevulinic acid containing drug products from a source other than DUSA as DUSA's LEVULAN®.
9. Defendants consent and agree to be preliminarily and permanently enjoined from promoting and advertising aminolevulinic acid containing drug products from a source other than DUSA in a confusingly similar manner to DUSA's LEVULAN®.

10. Defendants further consent and agree to make available for inspection by Plaintiff Defendants' books and/or other records likely to establish whether Defendants are in compliance with the terms of the Consent Judgment as set forth herein. Defendants shall make their books and/or other records available for inspection by Plaintiffs on request no more often than once per year, with the expense of inspection to be borne by Plaintiffs, unless such inspection reveals that Defendants are not in compliance with the consent judgment, in which case the expense will be borne by Defendants. Such inspection shall include appropriate safeguards for patient confidentiality.

11. Defendants consent and agree that Plaintiffs shall have the absolute right to enforce any and all terms of this Consent Judgment by and through any means permitted under statutory and/or common law.

12. Plaintiffs consent and agree to waive the entry of any monetary award in their favor and to forego reimbursement by Defendants for attorneys fees and costs, including the Defendants' use of their existing stock of approximately 25 does of ALA product, provided that Defendants comply with each of the terms and conditions of this Consent Judgment as set forth herein.

13. Defendants also consent and agree that in the event Defendants fail to comply with any or all terms of this Consent Judgment, Plaintiffs shall have the absolute right to seek from Defendants awards previously waived, and all fees and costs associated with bringing the above-captioned action and from enforcing compliance with this Consent Judgment.

**SO ORDERED:**

**BY THE COURT:**

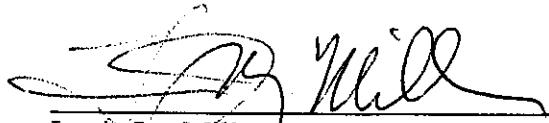
Dated: 12-21-2005, 2005



J. James F. Donnelly

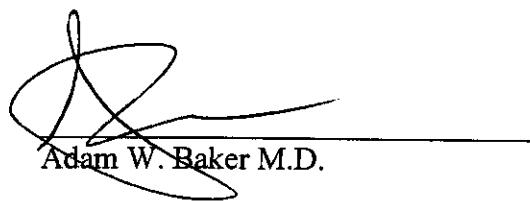
We consent to this Judgment:

PLAINTIFFS DUSA PHARMACEUTICALS,  
INC. and QUEEN'S UNIVERSITY AT  
KINGSTON



Louis Jay Miller  
Apperson, Crump & Maxwell, PLC  
6000 Poplar Avenue, Suite 400  
Memphis, TN 38119

DEFENDANT ADAM W. BAKER, M.D.

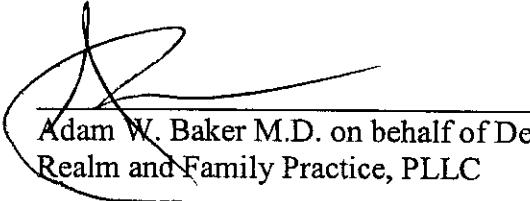
  
Adam W. Baker M.D.

Dated: December 17, 2005

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Valerie Brand Pipano  
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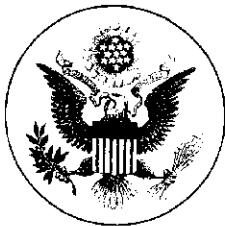
Dated: December 17, 2005

DEFENDANT DERMATOLOGY REALM AND  
FAMILY PRACTICE, PLLC

  
Adam W. Baker M.D. on behalf of Dermatology  
Realm and Family Practice, PLLC

Dated: December 17, 2005

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF TENNESSEE



# Notice of Distribution

This notice confirms a copy of the document docketed as number 5 in case 2:05-CV-02853 was distributed by fax, mail, or direct printing on December 23, 2005 to the parties listed.

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Honorable Bernice Donald  
US DISTRICT COURT